STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 17, 2006 Agenda ID #5364
Adjudicatory

TO: PARTIES OF RECORD IN INVESTIGATION 05-06-042

This is the draft decision of Administrative Law Judge (ALJ) Bushey. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure (Rules). These rules are accessible on the Commission's Website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN_
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **<u>DRAFT DECISION OF ALJ BUSHEY</u> (Mailed 2/17/2006)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| In the Matter of the Order Instituting Investigation on the Commission's Own Motion Into the Operations and Practices of Wine & Roses Limousine Service, a California Corporation, doing business as AA Limousine, AAA Limousine, Expresso Limousine, Expresso Transportation, AAA Corporate Limousines, Total Transportation Network (TTN), and LaGrande Affaire (PSG-12361-P-B), and its President, Steve Bonner, to Determine Whether They Have Violated the Laws, Rules, and Regulations Governing the Manner in Which Charter-Party Carriers Conduct Operations and Whether They are Fit to Continue to Conduct Passenger Transportation Service.<br><br>Respondents. | Investigation 05-06-042<br>(Filed June 30, 2005) |

## FINAL DECISION MODIFYING SETTLEMENT AGREEMENT AND APPROVING AS MODIFIED

### I. Summary

This decision modifies the settlement agreement between Respondents and the Commission's Consumer Protection and Safety Division (CPSD), and approves the settlement agreement as modified.

### II. Background

The Commission opened this investigation to determine whether sufficient evidence exists to order the immediate suspension of Respondents' charter-party carrier authority. The Commission ordered that a prehearing conference be scheduled within 40 days, with hearings as soon as practicable thereafter.

As set forth in the Commission's opening order, staff has conducted a thorough investigation of Respondents' operations, including regulatory and legal history. Staff alleged 305 violations of the Public Utilities Code and our regulations, as well as the California Vehicle Code. These include allegations of operating after suspension and revocation of permit, failing to have required insurance, and employing drivers without proper California driver licenses.

Consistent with the Commission's direction for an expeditious hearing process, a prehearing conference was scheduled for Tuesday, July 19, 2005. Respondents were also ordered to file and serve a response to staff's allegations that would specify which, if any, of staff's allegations Respondents dispute, and to describe the evidence Respondents would produce at hearing in support of their position.

On July 11, 2005, Respondents' staff notified the assigned Administrative Law Judge (ALJ) that Steve Bonner (a named respondent and the president of the corporate entity holding the charter-party authority) was out of the country, and that he required additional time to obtain legal counsel. With the concurrence of Respondents, the dates for filing their response and for the prehearing conference were rescheduled for August 19 and 23, 2005, respectively.

Respondents failed without explanation to appear at the August 23, 2005, prehearing conference. Staff telephoned Respondents' office but reached only a voicemail recording. The Assigned Commissioner and ALJ convened the prehearing conference and received staff's exhibits into the record.

Due to Respondents' failure to appear, and the public safety implications of the staff's allegations, the assigned ALJ and Commissioner decided that

Respondents' operating authority should be suspended at the earliest opportunity. A draft decision suspending Respondents' operating authority was placed on the Commission's September 8, 2005 agenda.

On September 6, 2005, Respondents and CPSD submitted a settlement agreement and a motion requesting that the Commission approve it. In light of the settlement agreement, the draft decision was removed from the September 8 agenda and a decision prepared that would have approved the settlement agreement. On October 27, 2005, the Commission declined to adopt the settlement agreement, and the proceeding was re-assigned to Commissioner Bohn on November 1, 2005.

On November 21, 2005, the Assigned Commissioner and ALJ convened a prehearing conference to consider further procedural steps for evaluating the settlement agreement between the CPSD and Respondents. After receiving additional information and testimony, they took the matter under advisement and indicated that a ruling would be forthcoming with any additional procedural steps.

On December 8, 2005, CPSD filed a motion requesting consideration of additional information; specifically, a letter from Michael C. Berman, President of FSB Transportation, Inc. (FSB) indicating that FSB was "in the process of purchasing Wine & Roses Limousine Service." CPSD stated in the motion that it "does not hold an opinion" regarding the proposed acquisition. On January 5, 2006, the assigned ALJ granted CPSD's request for consideration of the additional information and directed additional investigation. However, on January 27, 2006, CPSD filed a motion stating that FSB had withdrawn as a prospective buyer. CPSD also requested that the following two additional provisions be added to the settlement:

1. During the period the settlement agreement is in force, if there is a sale of Wine & Roses Limousine Service (Wine & Roses), a provision in the escrow closing process should provide for immediate full payment of the balance of the fine imposed by the Commission.
2. Respondents must provide full disclosure and a copy of the settlement agreement to any potential buyers.

## III. Additional Evidence Presented

At the second prehearing conference, CPSD and Steve Bonner presented additional evidence. CPSD presented a staff report for the record which showed that CPSD staff had reviewed all facets of Wine & Roses' operations and had found no on-going violations of law or regulations. The report stated that Respondents had made great efforts to correct all allegations in the Order Instituting Investigation, and had a currently active Class B charter-party permit. Staff also confirmed that Respondents are enrolled in the Employer DMV Pull Notice program.

On behalf of Respondents, Bonner testified that he has hired a new operations manager who is responsible for compliance effort and accomplishments. Bonner also offered financial data for the record which shows that Wine & Roses generates about $1 million in annual revenue but that expenses consume virtually the entire amount. He also stated that settlement payments would be the highest priority expense.

## IV. Description of the Settlement Agreement

The settlement agreement provides for a fine, payable in installments, a two-year probation period, and semi-annual reports to the Commission's staff, each of which is discussed in more detail below. The settlement agreement is Attachment A to today's decision.

Pursuant to the settlement agreement, Respondents agree to pay a fine of $15,000, of which $3,000 is stayed so long as Respondents remain in compliance with the settlement agreement. Respondents have agreed to pay the $12,000 fine in $1,000 monthly increments. The first $1,000 payment is due 30 days after the effective date of this decision. If Respondents fail to make timely payments, the remaining balance of the $15,000 shall become due and payable immediately.

As noted, Respondents will be on probation for two years. If, during this time, CPSD finds any additional violations of Commission rules or law, CPSD will recommend further penalties to the Commission.

Respondents must file a detailed report every six months demonstrating that their insurance, drivers, and equipment are in full compliance with all applicable law and regulations. The report shall also show that any consumer complaint received by Respondents has been investigated and resolved. Respondents' president, Steve Bonner, shall sign each report under penalty of perjury and submit it to CPSD. The first such report is due 30 days after the effective date of this decision.

## V. Settlement Criteria and Modifications to the Settlement Agreement

The Commission evaluates proposed settlement agreements pursuant to the standards set forth in Rule 51.1(e) of the Commission's Rules of Practice and Procedure (Rules). Those standards require that the "settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Each standard will be separately considered below.

Respondents have agreed to bring their operations into full compliance with applicable law, with fine payments to provide monthly reminders for failing to comply. To demonstrate that Respondents continue compliance, the settlement agreement also requires Respondents to provide semi-annual reports to CPSD during a two-year probationary period. In the joint motion, the parties state that the agreement is "reasonable in that it penalizes respondents for illegal operations, deters future illegal operations, and brings respondents into compliance."

We believe that Respondents should provide an additional initial showing of their commitment to compliance. We find that the initial payment should be increased to $2,000, with ten subsequent monthly payments of $1,000. The settlement agreement should also contain a clearer statement of the expected result of noncompliance with any provision of the settlement. Should Respondents fail to make timely payments, the entire amount, including the suspended $3,000, shall become immediately due and payable. Untimely payments, or failure to comply with any other provision of the settlement agreement shall be grounds for a motion by CPSD to reopen this proceeding and seek immediate suspension or revocation of Respondents' operating authority: "Should respondents fail to make timely payments or otherwise fail to comply with the provisions of this settlement agreement, or any state law or regulation, CPSD will immediately seek suspension or revocation of respondent's operating authority, and that the Commission will summarily approve such a request." CPSD's requested additional terms, set out above, are also reasonable and should be included.

With these modifications, we find the settlement agreement reasonable in light of the record. Under the settlement, "Respondents acknowledge the accuracy of each allegation contained in CPSD's reports" received into evidence. Respondents will be required to comply with detailed law and regulations designed to protect consumers. The fine, as modified, creates a significant financial incentive against future illegal operations. Should Respondents fail to comply, the settlement agreement creates the expectation that suspension or revocation of Respondents' operating authority will result. We conclude that the settlement agreement is reasonable in light of the whole record and reasonably resolves the issues and furthers our enforcement objectives.

The settlement agreement is consistent with the law in that it requires respondents to comply with the regulations applicable to passenger transportation services. The amount of the fine, as well as the technique of staying a significant portion to as incentive for compliance and cooperation, is consistent with previous decisions.

The settlement agreement, as modified, efficiently and expeditiously resolves these matters, and offers assurance that Respondents' future operations will be in compliance with applicable law. We conclude that approving the settlement agreement with modifications is in the public interest.

Having found that the modified settlement agreement is reasonable in light of the record, consistent with the law, and in the public interest, we will approve it.

## VI. No Hearing is Necessary

The record of the proceeding provides sufficient information for us to evaluate whether the modified settlement agreement meets our standards for approval. No factual issues require resolution. We conclude that no hearing is necessary.

## VII. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7. Comments were filed on ________________ and reply comments were filed on _______________.

## VIII. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

## Findings of Fact

1. The Commission initiated this proceeding in response to consumer complaints and CPSD's investigation.
2. Respondents entered into a settlement agreement with CPSD, which resolves the issues in this proceeding.
3. No hearing is necessary.
4. The settlement agreement requires modifications as set forth above to meet our standards for approval of such agreements.

## Conclusions of Law

1. The modified settlement agreement satisfies the requirements of Rule 51.1(e).
2. The modified settlement agreement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The settlement agreement should be modified to include the following provisions:

   a. The installment payment plan shall be modified to require an initial payment of $2,000, payable no later than 30 days after the effective date of this order. Ten subsequent monthly payments of $1,000 shall be made at the conclusion of each 30-day period following the initial payment. If any payment is not timely, the entire outstanding debt, including the suspended $3,000, shall become immediately due and payable.

   b. Should Respondents fail to comply with the provisions of this settlement agreement, including the financial payment requirements, or any state law or regulation, CPSD will immediately seek suspension or revocation of Respondents' operating authority, and that the Commission will summarily approve such a request.

c. During the period the settlement agreement is in force, if there is a sale of Wine & Roses, a provision in the escrow closing process should provide for immediate full payment of the balance of the fine imposed by the Commission.

d. Respondents must provide full disclosure and provide a copy of the settlement agreement to any potential buyers.

4. The settlement agreement resolves the allegations in this proceeding against Respondents.

5. This decision should be effective immediately.

## FINAL ORDER

**IT IS ORDERED** that:

1. The settlement agreement, attached hereto as Attachment A, is modified as set forth above in Conclusion of Law 3. These modifications are hereby incorporated into the settlement agreement, supersede all inconsistent provisions of the settlement agreement, and are binding on the parties to the settlement agreement. All copies of the settlement agreement shall include a copy of the modifications, and the final agreement shall be designated the modified settlement agreement. The modified settlement agreement, as set forth above, between the Consumer Protection and Safety Division and Steve Bonner, president of Wine & Roses Limousine Service, is approved and adopted.

2. The parties shall comply with all provisions of the modified settlement agreement.

3. No hearing is necessary for this proceeding.

4. This proceeding is closed.

This order is effective today.

Dated ______________________________, at San Francisco, California.